

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Richard C. Auchterlonie

PCT/US2005/009723 filed 23 March 2005

Serial No.: 10/599,251 Confirm 6262

371(c) Filed: 09/22/2006

For: Pulsed Power System Including a Plasma
Opening Switch

U.S. Patent 7,634,042 B2 issued Dec. 15, 2009

Group Art Unit: 2821

Examiner: PHILOGENE, Haissa

Atty. Dkt. No.: AUCH.0010.PCUS0

APPLICATION FOR PATENT TERM ADJUSTMENT PER 37 C.F.R. 1.705(d)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir or Madam:

Pursuant to 37 C.F.R. 1.705(d), the applicant-patentee respectfully requests reconsideration of the patent term adjustment printed on the face of U.S. Patent 7,634,042 B2 by re-calculation of the patent term adjustment to comply with the Federal Circuit Decision in Wyeth v. Kappos regarding the overlapping delay provision of 35 U.S.C. 154(b)(2)(A).

In short, the PTA adjustment of 623 days printed on the face of U.S. Patent 7,634,042 does not include a “non-overlapping” 84 days of USPTO “Three Years” delay of 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. 1.702 (b) from 09./22/2009 (which is three-years after the 371(c) filing date of 09/22/2006) until the patent issue date of Dec. 15, 2009. Thus, applicant requests correction of the issued U.S. Patent 7,634,042 B2 to indicate a total PTA adjustment of $623 + 84 = 707$ days.

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It is respectfully submitted that this request is timely since the USPTO has advised applicants that: “The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.” See, for example, page 2 of the Decision on Petition mailed Feb. 6, 2008 in Rozhon et al. Application No. 09/712,033 filed Nov. 14, 2000.

Compliance with the requirements of paragraphs (b)(1) and (b)(2) of 37 CFR 1.705

(b)(1) Submitted herewith is the \$200. fee of 37 C.F.R. 1.18(e). Please deduct any deficiency or refund any excess to Novak Druce Deposit Account No. 14-1437.

(b)(2) A statement of the facts involved is as follows:

(i) The correct patent term adjustment is 707 days. The basis or bases under §1.702 for the adjustment is the addition of 84 “non-overlapping” days of USPTO “Three Years” delay of 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. 1.702 (b) from 09/22/2009 (which is three-years after the 371(c) filing date of 09/22/2006) until the patent issue date of Dec. 15, 2009, to the 623 days of USPTO delay from 11/22/2007 (14 months after the actual 371(c) filing date of 09/22/2006) until the mailing of the notice of allowance on 08/06/2009.

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(ii) the relevant dates are the 371(c) filing date of 09/22/2006, the Notice of Allowance mailing date of 08/06/2009, and the patent issue date of 12/15/2009. See also the dates in the following copy of the Patent Term Adjustment History downloaded from public PAIR on Feb. 15, 2010:

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10/599,251 PULSED POWER SYSTEM INCLUDING A PLASMA OPENING SWITCH		02-15-2010::17:56:03
Patent Term Adjustments		
Patent Term Adjustment (PTA) for Application Number: 10/599,251		
Filing or 371(c) Date:	09-22-2006	USPTO Delay (PTO) Delay (days): -
Issue Date of Patent:	12-15-2009	Three Years: -
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days): -
Post-Issue Petitions (days):	-	Total PTA (days): 623
USPTO Adjustment(days):	-	Explanation Of Calculations
Patent Term Adjustment History		
Date	Contents Description	PTO(Days) APPL(Days)
11-24-2009	PTA 36 Months	
12-15-2009	Patent Issue Date Used in PTA Calculation	
11-18-2009	Dispatch to FDC	
11-18-2009	Dispatch to FDC	
11-10-2009	Application Is Considered Ready for Issue	
11-03-2009	Issue Fee Payment Verified	
11-06-2009	TC Return to Pubs	
11-03-2009	Issue Fee Payment Received	
08-20-2009	Pubs Case Remand to TC	
08-06-2009	Mail Notice of Allowance	623
08-04-2009	Notice of Allowance Data Verification Completed	⬆
08-04-2009	Case Docketed to Examiner in GAU	⬆
08-04-2009	Document Verification	⬆
08-03-2009	Examiner's Amendment Communication	⬆
09-22-2006	Information Disclosure Statement considered	⬆
12-22-2006	Information Disclosure Statement considered	⬆
04-15-2009	Case Docketed to Examiner in GAU	⬆
02-18-2009	Case Docketed to Examiner in GAU	⬆
02-03-2009	Case Docketed to Examiner in GAU	⬆
10-30-2008	IFW TSS Processing by Tech Center Complete	⬆
06-12-2008	Request for Foreign Priority (Priority Papers May Be Included)	⬆
12-22-2006	Reference capture on IDS	⬆
12-22-2006	Information Disclosure Statement (IDS) Filed	⬆
09-22-2006	Reference capture on IDS	⬆
09-22-2006	Information Disclosure Statement (IDS) Filed	⬆
09-22-2006	Preliminary Amendment	⬆
10-02-2008	PG-Pub Issue Notification	⬆
08-05-2008	Transfer Inquiry to GAU	⬆
12-22-2006	Information Disclosure Statement (IDS) Filed	⬆
09-22-2006	Information Disclosure Statement (IDS) Filed	⬆
07-01-2008	Application Dispatched from OIPE	⬆
09-22-2006	371 Completion Date	⬆
06-24-2008	Sent to Classification Contractor	
06-24-2008	Notice of DO/EO Acceptance Mailed	

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06-24-2008	Filing Receipt
09-29-2006	Cleared by OIPE CSR
09-22-2006	Initial Exam Team nn

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(iii) The patent is not subject to a terminal disclaimer.

(iv) (B) There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in §1.704.

Respectfully submitted,

/ Richard C. Auchterlonie /

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